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IN THE

Supreme Court of the United States

OCTOBER TERM—1946

No. 342

DANIEL BIRMELI DINGMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF ORDER OF OCTOBER 14, 1946, DENYING PETITION FOR A WRIT OF CERTIORARI

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December 18, 1946.

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Counsel recognizes that a petition for rehearing of a denial of certiorari cannot be warranted, or otherwise than futile, unless based upon the most convincing and compelling grounds. Counsel believes that such grounds here exist.

Indeed, counsel believe this to be not only the unusual case where a petition for rehearing of a denial of certiorari is warranted and should be granted, but the still more unusual case where the Solicitor General would be warranted in now consenting to the issuance of the writ, unless he is in a position to controvert the facts shown by this petition.

I.

This petition will show that the legislative history of the Extension of Service Acts of August 18 and December

13, 1941, under which, if at all, petitioner's conviction must be sustained,* demonstrates beyond reasonable question:

(a) that the Executive in requesting such Acts, and the Congress in enacting them, specifically intended to limit the extensions of service there provided so as to apply *solely to such persons* as, of the date of those Acts, might be "now or hereafter in or subject *to active military service*";

(b) that therefore the specific language of such Acts, *expressly* limiting the extensions of service there

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*It now clearly appears that petitioner's conviction can be sustained, if at all, only under such Extension of Service Acts.

The Government's Brief in Opposition, p. 4, expressly concedes that at the time petitioner, as charged in the indictment, allegedly absented himself without authority from Civilian Public Service Camp No. 148, petitioner had already served in public service camps *for approximately two years.*

This concession is based on Government Exhibits 1 and 2 which were introduced at the trial (R. 11) but were not incorporated in the record on appeal to the Circuit Court of Appeals (R. 18-19), but by stipulation of August 7, 1946 (R. 32) between counsel for the Government and counsel for the petitioner, have been filed with this Court and may be considered as part of the record before it (see footnote p. 4 Government's brief in opposition).

Petitioner's conviction therefore cannot be sustained under the Selective Training and Service Act of 1940 as originally enacted, since Section 3(b) of that Act (see Appendix E to this petition) limits service under that Act to twelve months.

If petitioner's conviction can be sustained, it, therefore, can only be under the Extension of Service Acts of August 18 and December 13, 1941, which removed such twelve months limitation on service.

Finally, as noted in the footnote, p. 4 of the petition for certiorari, petitioner was not, and obviously could not have been, indicted or convicted for a violation of the Selective Training and Service Act of 1940 *as originally enacted,* but was expressly indicted and convicted for an alleged violation of that Act *as amended* (R. 2, 13), i.e., by such Extension of Service Acts.

provided solely to such persons "now or hereafter in or subject to active military service",* was knowingly and intentionally used in order to carry out such intention of the Executive and of the Congress; and,

(c) *that neither the Executive nor the Congress had any intention whatever that the extensions of service provided by such Acts should apply to such conscientious objectors who, like petitioner, never had been, nor could ever be "now or hereafter in or subject to active military service",* because by the express provisions of Section 5(g) of the Selective Training and Service Act of 1940 such conscientious objectors could *only be "assigned to work of national importance under civilian direction",* since found conscientiously opposed even to non-combatant service.**

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*Though the Government has not raised the point, it might be contended that in the Extension of Service Act of August 18, 1941, the limiting words "who are now, or who may hereafter be, in or subject to active military service", are grammatically confined to the immediately preceding words "and any other members of the Army". That this is not so is shown by the use in the immediately succeeding proviso of the words "active military service" in obviously *inclusive* application to "any person subject to the provisions of this section." See text of Extension of Service Act of August 18, 1941, (Service Extension Act of 1941) p. xxxiv of Appendix E to this petition.

**Counsel believe that frankness with this Court requires them to state that the rationale of the legislative history of the Extension of Service Acts of August 18 and December 13, 1941, would not seem to sustain the contention made at pages 2-3 of petitioner's reply to the brief in opposition, that those Acts do not apply even to conscientious objectors who, *unlike petitioner,* have been *actually inducted for non-combatant service,* since not found conscientiously opposed to such service. In this respect counsel wish to revert to the position taken at page 6 of the petition for certiorari that *such conscientious objectors* may well be subject to the extended periods of service provided by

II.

This is conclusively shown by the following facts:

(A) *Nowhere in the entire legislative record of either of such Extension of Service Acts is there a single word referring to the extension of service of conscientious objectors, nor with two irrelevant exceptions,* is there even a mention of "conscientious objectors" in any connection.*

That record, it will be shown, covers all Executive communications asking or relating to the enactment of such Extension of Service Acts, numerous committee and conference reports relating thereto, debates in the Senate and

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such Acts. The legislative history of such Acts indicates that the Congress clearly had in mind that "active military service" may be *non-combatant* as well as combatant, and that therefore to limit the meaning of "active military service" solely to *combatant service* would be an unjustifiably narrow construction. For instance, while medical corpsmen are clearly non-combatants, they not only have been trained for, but many of them undeniably have rendered extremely "active military service". Furthermore, many medical corpsmen have been conscientious objectors, who, *because not found to be opposed to non-combatant service,* have therefore been inducted for such service under the express provisions of Section 5 (g) (1) of the Selective Training and Service Act of 1940. As to *such conscientious objectors* there could seem to be no reason why the Extension of Service Acts should not apply to them as well as to medical corpsmen who are not conscientious objectors.

*A. J. Muste in a hearing before the Senate Committee on Military Affairs on S. J. Res. 92 and 93 asked that Section 5(g) of the Selective Training and Service Act of 1940 be amended so as unconditionally to exempt, even from assignment to work of national importance under civilian direction, any conscientious objector found to be conscientiously opposed to participation even in such work.

The only other mention was a casual and irrelevant reference, during debate in the House, to the fact that Sergeant York had originally been a conscientious objector (Cong. Rec. 77th Cong. Vol. 87 Part 6 p. 6933).

House covering several hundred pages of the Congressional Record, and reports of hearings before the respective Committees on Military Affairs of the Senate and House, likewise several hundred pages in length.

(B) *Moreover, throughout such Executive communications, committee reports, conference reports, hearings and debates all references are explicity or implicitly confined exclusively* to those then or thereafter in or subject to *active military service,* and to the necessity of extending the periods of such *active military service* for the express purpose of preventing, in time of national danger, the disintegration of personnel and units already trained for *such service* by mandatory discharge after twelve months' service, and of permitting their retention for the training of new personnel and units for *active military service.**

In factual support of the foregoing statements in I and II of this petition, there are attached as appendices hereto:

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*As noted in the second footnote on page 3 of this petition, it would appear from such legislative history that the term "active military service" may reasonably be construed to include not only combatant but *non-combatant* "active military service", and may therefore include conscientious objectors who, *unlike petitioner,* have not been found opposed to non-combatant service, and thus, under the express provisions of Section 5 (g) (*1*) have actually been *inducted for such service.* Even thus broadly construed, however, the term "active military service" cannot include conscientious objectors, who, *like petitioner,* having been found conscientiously opposed even to non-combatant service, therefore *cannot be inducted for any military service whatever,* but under the express provisions of Section 5 (g) (*2*) of the Selective Training and Service Act of 1940 must in lieu thereof be merely "*assigned* to work of national importance *under civilian direction*".

Appendix A—Resumé of the legislative history of the Extension of Service Act of August 18, 1941.

Appendix B—Excerpts from the legislative history of the Extension of Service Act of August 18, 1941.

Appendix C—Resumé of the legislative history of the Extension of Service Act of December 13, 1941.

Appendix D—Excerpts from the legislative history of the Extension of Service Act of December 13, 1941.

Appendix E—Relevant portions of the Selective Training and Service Act of 1940, and of the Extension of Service Acts of August 18 and December 13, 1941.

III.

It therefore appears:

A. That petitioner, a conscientious objector who, under the express provisions of Section 5(g) of the Selective Training and Service Act of 1940, *never has been, nor ever could be* "in or subject to active military service", nevertheless has been convicted of the violation of amendments to that Act, which by their express terms and by proved Executive and Congressional intent, *can apply only to those persons* "now or hereafter in or subject to *active military service*".

B. That the contentions of the Government that the application of such Extension of Service Acts is not so limited are fallacious. These contentions are the following:

1. The Government contends that since petitioner himself concedes that although the twelve months' period of service provided by Section 3 (b) of the Selective Training and Service Act of 1940 does not in express terms apply to conscientious objectors such as petitioner, who have not been inducted for active military service but in lieu of such induction have been assigned to work of national importance under civilian direction, it follows that the extensions of such twelve months period of service provided by the Extension Acts of August 18 and December 13, 1941, must likewise be construed to apply to such conscientious objectors, even though the language thereof appears expressly to exclude them. In other words, the Government argues that since the language of Section 3(b) of the 1940 Act is not to be construed literally, neither should the language of the Extension Acts of August 18 and December 13, 1941, be so construed. As shown at pages 2-4 of petitioner's reply to the brief in opposition, this is a *non-sequitur*.

Section 3(b) cannot be construed literally without unreasonable and possibly unconstitutional results. To construe the twelve months' limitation of service provided by that Section as not applying to such conscientious objectors as petitioner, would condemn them, unlike any other selectees, to indeterminate service, the length of which would be limited only by the will of the President. Since there is nothing in the language of that Section expressly excluding such conscientious objectors, it is therefore clearly

permissible to construe that language as including them, in order to avoid such results. *Moreover, it is to be noted that the Government itself so construes Section 3(b), and nowhere has claimed that under Section 3(b) petitioner's term of assignment is indeterminate and, therefore, that petitioner's conviction would be sustainable under Section 3(b), even should such subsequent Extension of Service Acts be found inapplicable to petitioner.*

On the other hand, the language of the Extension Acts of August 18 and December 13, 1941, expressly limiting the extensions of service there provided to those "now or hereafter in or subject to active military service" can be construed literally without any such unreasonable or possibly unconstitutional results. Moreover, such language cannot be construed as including conscientious objectors such as petitioner, *who never have been or can be* "in or subject to *active military service*", without violating the proved Executive and Congressional intention to the contrary in the use of such limiting language.

2. The Government contends that the appropriation of funds by the Congress for the operation and maintenance of Civilian Public Service Camps subsequent to the promulgation of Selective Service Regulation 652.14, constitutes Congressional affirmance of such Regulation, which construes such Extension of Service Acts as applying to conscientious objectors assigned to work of national importance.

This again is a *non-sequitur* as shown on pages 5 and 6 of petitioner's reply to the Government's brief in opposition. The operation and maintenance of such Civilian

Public Service Camps would still continue necessary for the handling of new conscientious objectors, still assignable to such camps for twelve months service under the continuing application to such conscientious objectors of Sections 3(b) and 5(g) of the Selective Training and Service Act of 1940, even though neither their periods of service nor that of such conscientious objectors who have already completed such twelve months service, have been extended by such Extension Acts.

3. The Government contends that it has been its policy to make the conditions of service of conscientious objectors assigned to work of national importance, comparable to the conditions of service of selectees actually inducted into the Army. As shown at pages 6-8 of petitioner's reply to the brief in opposition, the facts clearly contradict this contention of the Government.

IV.

It would seem, therefore, that petitioner is now clearly entitled to certiorari to review his conviction unless his petition therefor was fatally defective in law because it did not set out the legislative history of the Extension Acts of August 18 and December 13, 1941. This, counsel respectfully submit, is not the case.

Such legislative history constitutes mere confirmatory evidence of the construction of such Extension of Service Acts alleged in the petition for certiorari, which construction is supportable by valid canons of statutory construction, even without such legislative history.

Furthermore, as suggested at page 9 of the petition for certiorari, it is doubtful whether within the appropriate limits of a petition for certiorari as prescribed by Rule

38(2) of this Court, such confirmatory evidence by way of legislative history could properly be presented either in a petition for such writ or in a supporting brief, because of its necessarily extensive character. Such legislative history would, as there suggested, appear to be more properly a matter for adequate and exhaustive discussion after issuance of certiorari.

Moreover, limitations of time imposed in criminal cases by Rule 37b(2) of the Rules of Criminal Procedure, would, in any event, have prevented an adequate review and analysis of such legislative history in the petition for certiorari. It, indeed, would not have been possible even in this petition for rehearing, except for the extensions of time granted by the orders of this Court of October 28, 1946 and December 4, 1946, for the presentation of this petition. This fact was expressly alleged in the application for such order of October 28, 1946, as a ground for the extension there granted, in addition to the grounds relating to the personal disability of counsel.

V.

Finally, it would appear that reasons of public concern warrant the granting of this petition for rehearing, and thereupon for the issuance of certiorari.

The question here presented is one of general Federal law not heretofore determined by this Court. It concerns not only the validity of petitioner's conviction and confinement in a penitentiary. It concerns also the validity of the present detention in conscientious objector camps of several thousand conscientious objectors who have already served the twelve months term prescribed by the Selective Service and Training Act of 1940, as well as the validity of the conviction and penal confinement of numerous conscientious

objectors based on similar constructions of the Extension of Service Acts of 1941. Unless this Court, therefore, on application for the *discretionary* writ of certiorari shall expressly and definitively determine the question of general law here presented, petitioner and other similar conscientious objectors now confined in conscientious objector camps or in prison, will have no other practical remedy than a blanket application to this Court for the issuance by this Court of an original writ of *habeas corpus, which is a writ of right and not of discretion.**

Plainly, individual applications for writs of *habeas corpus* to the various District Courts of the United States would neither afford adequate remedy from the point of view of such conscientious objectors, nor be practicable from the point of view of the Government. The District Courts thereby would be burdened with a multitude of such applications. Furthermore, should certiorari be here denied, *without opinion,* it is reasonable to assume that such District Courts would deny individual applications for *habeas corpus.* This, in turn, would involve a multitude of appeals to the several Circuit Courts of Appeal, which, it may be reasonably assumed, likewise would deny such appeals, thus burdening this Court with numerous applications for certiorari to review such denials. Under such circumstances, it does not seem open to doubt that a blanket petition to this Court for an original *habeas corpus* would be the only practicable remedy available and should lie.

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*It is respectfully submitted, moreover, that Rule 5 of this Court, requiring motions for leave to file cases on the original docket, cannot operate to make a writ of *habeas corpus* a discretionary writ or other than a writ of right, and if intended or construed so to do, would be invalid if applied to original writs of *habeas corpus,* as constituting an unconstitutional abridgement of that writ.

However, this Court by issuing certiorari and, thereunder, expressly and definitively deciding the question of general law here presented, irrespective of what that decision may be, *can obviate any necessity for resort to habeas corpus either by way of blanket application to this Court for an original writ or by a multitude of applications to the several District Courts.*

If that question is expressly and definitively decided contrary to petitioner's contentions, any resort thereafter to *habeas corpus* would obviously be futile. If petitioner's contentions, however, be expressly and definitively sustained, counsel feel assured that the Government would accord such decision due recognition and respect and, by Executive clemency or otherwise, would render resort to *habeas corpus,* unnecessary, so far as concerns conscientious objectors of petitioner's category.

Accordingly, petitioner respectfully petitions for rehearing of the order of October 14, 1946, denying the petition for certiorari herein, and prays that, thereupon, such writ shall issue and that, in due course thereafter, petitioner's conviction be reversed and set aside.

Respectfully submitted,

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December 18, 1946.

RESUME OF THE LEGISLATIVE HISTORY OF THE EXTENSION OF SERVICE ACT OF AUGUST 18, 1941

The following, counsel believe, comprise complete citations to the legislative history of the Extension of Service Act of August 18, 1941, including citations to its parliamentary history both in the Senate and the House of Representatives, Senate, House, and conference reports, relating thereto; hearings before the respective Committees on Military Affairs of the Senate and House; debates in both the Senate and House; and all relevant Executive communications. All page citations, unless otherwise specified, are to Congressional Record, 77th Congress, First Session, Volume 87, Part 6.

SENATE

July 10, 1941 S. J. Res. 92 and 93, introduced by Senator Reynolds and referred to Committee on Military Affairs (p. 5952).

July 21, 1941 S. J. Res. 95, introduced by Senator Thomas in substitution for S. J. Res. 92 and 93, and referred to Committee on Military Affairs (p. 6151).

July 17, 18, 21, 22, 23 and 24, 1941. Hearings before Committee on Military Affairs on S. J. Res. 92 and 93, and on S. J. Res. 95 in substituition therefor. Printed report of these hearings is officially captioned, "Retention of the Reserve Components and Selectees *in Military Service* Beyond Twelve Months" (Italics supplied).

July 25, 1941	Letter from Secretary of War to Senator Reynolds, Chairman of Committee on Military Affairs, United States Senate. (See S. Rept. No. 595, pp. 8 and 9).
July 28, 1941	Report of Committee on Military Affairs filed in Senate (p. 6329). See Senate Report No. 595 "to accompany S. J. Res. 95".
July 30, 1941	Debated in Senate (pp. 6430-6451).
July 31, 1941	Further debated (pp. 6494-6519).
August 1, 1941	Further debated (pp. 6465-6494).
August 4, 1941	Further debated (pp. 6660-6667, 6683).
August 5, 1941	Further debated (pp. 6736-6762).
August 6, 1941	Further debated (pp. 6811-6832).
August 7, 1941	Further debated and passed by Senate (pp. 6847-6881).
August 14, 1941	Senate concurred in House Amendments to S. J. Res. 95 and passed resolution as amended (pp. 7123-7126). See Sen. Doc. No. 108, dated August 14, 1941.

HOUSE OF REPRESENTATIVES

July 21, 1941	Message from President to Congress, H. R. Doc. No. 318.
July 21, 1941	H. J. Res. 217 and 218 introduced by Rep. May and referred to Committee on Military Affairs (p. 6234).
July 23, 1941	H. J. Res. 220 introduced by Rep. May and referred to Committee on Military Affairs (p. 6262).
July 24, 1941	H. J. Res. 222, introduced by Rep. May and referred to Committee on Military Affairs (p. 6327).

July 22, 25 and 28, 1941 Hearings before Committee on Military Affairs on H. J. Res. 217, 218, 220 and 222. (See printed report of hearings.)

August 1, 1941 Report of Committee on Military Affairs filed in House and referred to Committee of Whole House (p. 6657). See H. Rept. No. 1117 of August 1, 1941 "to accompany H. J. Res. 222".

Note: H. J. Res. 217, 218 and 220 not reported and no further record of them.

August 8, 1941 H. J. Res. 222 debated (pp. 6915-6955).

August 12, 1941 H. J. Res. 222 further debated and passed by House (pp. 6995-7075).

August 12, 1941 Rep. May moved to amend S. J. Res. 95 by striking out all but its title and substituting for its provisions, the provisions of H. J. Res. 222. So amended, passed by House (p. 7076) and House appointed conferees (p. 7077).

Note: As already noted above, on August 14, 1941, the Senate concurred in House amendments to S. J. Res. 95 and passed same as amended.

August 18, 1941 Approved and signed by the President; Public Law 213.

In connection with this legislative history it is stated at page 4 of this petition:

> *"Nowhere in the entire legislative record of either of such Extension of Service Acts is there a*

> *single word referring to the extension of service of conscientious objectors, nor with two irrelevant exceptions, is there even a mention of 'conscientious objectors' in any connection."**

The nature of this statement from page 4 of this petition is such that the only proof which it is practicable to offer this Court is the complete citation, here furnished, to the legislative history of the Extension of Service Acts of August 18, 1941, and the assurance of counsel that such statement is based on a careful reading of that history.

At page 5 of this petition it is stated:

> *"Moreover, throughout such Executive communications, committee reports, conference reports, hearings and debates all references are explicitly or implicitly confined exclusively* to those then or thereafter in or subject to *active military service,* and to the necessity of extending the periods of such *active military service* for the express purpose of preventing, in time of national danger, the disintegration of personnel and units already trained for *such service* by mandatory discharge after twelve months' service, and of permitting their retention for the training of new personnel and units for *active military service."***

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*The two exceptions above referred to are, as shown by the second footnote on page 4 wholly irrelevant to the question here presented.

**As stated in the second footnote on page 3 and in the footnote on page 5 of this petition, the rationale of such legislative history shows that the term "active military service" may reasonably be construed to include conscientious objectors who, *unlike petitioner,* have actually been inducted for non-combatant "active military service", but cannot be construed to include conscientious objectors who, *like petitioner, cannot be inducted for any military service whatever* but, in lieu thereof, may merely be *"assigned to work of national importance under civilian direction."*

This statement from page 5 of this petition permits of more precise proof than the prior statement quoted from page 4 of this petition.

While it is impracticable to attempt any extensive excerpts or quotations from such legislative history, it is practicable to excerpt representative portions of Executive communications requesting the legislation resulting in the Extension of Service Act of August 18, 1941, and of statements made in the Senate and the House by the Chairmen or members of their respective Committees on Military Affairs, as to the scope and purpose of such legislation.

Accordingly, there is set out in Appendix B, at the pages indicated, excerpts from the following:

pp. xi, xii—Message from the President to the Congress, July 21, 1941.

p. xiii—Excerpts from letter from the Secretary of War to the Chairman, Committee on Military Affairs, United States Senate, July 26, 1941.

pp. xiv, xv—Excerpts from statement of Senator Thomas, July 30, 1941 for the Senate Committee on Military Affairs, in connection with Senate Report 595.

pp. xvi, xvii—Excerpts from statement, August 8, 1941, of Rep. May, Chairman of House Committee on Military Affairs, in connection with House Joint Res. 222.

It is submitted that these excerpts fully sustain the statement quoted from page 5 of this petition as to the purpose and scope of the Extension of Service Act of August 18, 1941. Furthermore, counsel assures this Court that nothing to the contrary appears in any of the debates, hearings or reports.

In this connection, the Court's attention is particularly directed to the testimony of the following, contained in the printed report of "Hearings Before the Senate Committee on Military Affairs on S. J. Res. 92, 93 and 95, of July 17, 18, 21, 22, 23 and 24, 1941," at the pages indicated:

General George C. Marshall, pp. 2-43
Major General Jacob L. Devers, pp. 43-49
Major General Milton A. Reckord, pp. 49-57
Major General William H. Haskell, pp. 57-61
Major General John F. Williams, pp. 61-70

Likewise to the testimony of the following in the printed report of "Hearings Before the House Committee on Military Affairs on H. J. Res. 217, 218, 220 and 222, of July 22, 25 and 28, 1941," at the pages indicated:

General George C. Marshall, pp. 1-15
Mr. Grenville Clark, pp. 41-57
Major General Jacob L, Devers, pp. 88-99
Brigadier General Lewis B. Hershey, pp. 99-104

EXCERPTS FROM MESSAGE FROM THE PRESIDENT TO THE CONGRESS, JULY 21, 1941. (H. R. Doc. 318, p. 2.)

"I need scarcely emphasize the fact that if and when an organized and integrated company, battalion, regiment, or division is compelled to send two-thirds of its members home, those who return to civil life, if called to the colors later on would have to go through a new period of organization and integration before a new unit to which they were assigned *could be depended upon for service.* The risks and the weaknesses caused by dissolving *a trained Army* in times of national peril were pointed out by George Washington over and over again in his message to the Continental Congress.

It is therefore obvious that if two-thirds of *our present Army* return to civilian life, it will be almost a year before the *effective Army strength* again reaches 1,000,000 men.

* * * *

Therefore we would be taking a grave national risk unless the Congress were to make it possible for us to maintain our present full *effective strength* and during the coming year give training to as many additional Americans as we can, when *immediate readiness for service* becomes more and more a vital precautionary measure, the elimination of approximately two-thirds of *our trained soldiers,* and about three-fourths of the total officer personnel, would be a tragic error.

* * * *

The objective is, of course, the all important issue. It is to authorize continuance in service of selectees, National Guard, and reserve components of the Army and the retired

personnel of the Regular Army, with the understanding that, should the exigencies of the situation permit, early return to civil pursuits will follow in due course.

* * * *

Because of the swiftness of modern events, I think the Congress should remove the restrictions in regard to the numbers of selectees *inducted each year for training and service.*

And, in order to reduce individual hardships to a minimum, I urge that the Congress provide that employers be asked to continue to keep jobs open for their employees *who have been held in the Army.* * * *

One final word: Time counts. Within 2 months disintegration which would follow failure to take congressional action, will commence *in the Armies of the United States.* Time counts. The responsibility rests solely with the Congress."

EXCERPTS FROM LETTER FROM THE SECRETARY OF WAR TO HON. ROBERT B. REYNOLDS, CHAIRMAN, COMMITTEE ON MILITARY AFFAIRS, UNITED STATES SENATE, JULY 25, 1941 (Senate Rep. No. 595, pp. 8 and 9.)

* * * *

"The War Department favors the enactment of legislation designed to accomplish the following objectives

(a) To extend the terms of enlistments in the Regular Army and its components and to extend the terms of enlistments and appointments in the Reserve components of the Army of the United States for the duration of the national emergency unless sooner terminated by direction of the President.

(b) To authorize the President *to retain in active military service selectees* and members and units of the Reserve components of the Army of the United States *who are now in active military service* for such period as he may deem necessary in the interest of national defense, and to order *into active military service* such numbers of the members and units of the Reserve components who are not now on active duty as he may deem necessary for a similar period.

(c) To authorize the employment of the retired personnel of the Regular Army in active service for such purposes and for such periods as the President may determine."

* * * *

EXCERPTS FROM STATEMENT, JULY 30, 1941, OF SENATOR THOMAS FOR COMMITTEE ON MILITARY AFFAIRS OF THE SENATE IN CONNECTION WITH SENATE REPORT 595. (Congressional Record 77th Congress, First Session, Vol. 87, Part 6, p. 6433)

"The legislation is proposed by the committee in response to the statements of the President in his message of July 21, 1941, to the Congress of the United States that a grave national risk would be involved unless the Congress should make is possible to maintain *the present full strength of the Army,* and during the coming year, as a precautionary measure, to give training to as many additional Americans as we can. In that message the President set forth the urgent need for the immediate enactment of legislation, in such form as the Congress deems appropriate, authorizing the continuance in service of selectees, the members and units of the reserve components of the Army of the United States, including the National Guard of the United States and retired personnel of the Regular Army, with the understanding that, should the situation permit, early return to civil pursuits would follow in due course. The President also emphasized, in view of the swiftness of modern events, the need for the removal of the restrictions in regard to the number of selectees *inducted* each year for training and service under the Selective Training and Service Act of 1940, and in this connection, in order to reduce individual hardships to a minimum, further to include in such legislation provision for reemployment benefits on behalf of all those retained or ordered *into active military service during the present national peril.*

The Chief of Staff of the Army stated to the committee that it is the purpose of the War Department to

release selectees from service as soon as practicable after completion of their 12-months period of training and service, *but to accomplish this without complete disruption of the entire defense force* requires that it be done at such time and in such numbers *as will best preserve the readiness for use of each unit.* This cannot be accomplished on a fixed and inflexible schedule.

Your committee believes that, since the passage of the Selective Training and Service Act of 1940 and Public Resolution 96, Seventy-sixth Congress, international developments have been such as to imperil our national safety and security *and to make essential the maintenance of an adequate and efficient armed force.* To do otherwise would under existing circumstances, be to invite possible disaster.

From the evidence presented to the committee it appears that the national interests are now imperiled and the safety of our country requires that the periods of service of all selectees and members and units of the reserve components of the Army of the United States, as well as all retired personnel and enlisted men of the Regular Army, be extended for such periods of time as are necessary in the national interests."

EXCERPTS FROM STATEMENT, AUGUST 8, 1941, OF REPRESENTATIVE MAY, CHAIRMAN OF COMMITTEE ON MILITARY AFFAIRS OF THE HOUSE OF REPRESENTATIVES IN CONNECTION WITH HOUSE JOINT RES. 222 (77th CONGRESS, FIRST SESSION, VOLUME 87, PART 6, pp. 6916, 6917)

* * * *

"What is the situation; what are we considering?

"We are considering one question and one question only, and that is the question of the extension for a longer period than 12 months of the training and service of the selectees, the National Guard and the Reserve Corps. I call attention to some of the provisions of the original act as a basis for what I shall say hereafter. The Congress declared a policy in that act, and it declared first——

> 'The Congress hereby declares that it is imperative to increase and train the personnel of the *armed forces* of the United States * * *' "

* * * *

"What are we going to do about advice as to operating and maintaining *an army* * * * are we going to take the sound, deliberate, and well considered judgment of the Chief of Staff or the United States Army, a professional soldier, who knows what we have and what we have not, who knows the defects, who knows the virtues and the power that he has * * *"

* * * *

"*When I want a soldier to fight,* I want one that has been trained the length of time necessary to enable him to understand the difficulties of the operation of mechanized units here or a difficult piece of machinery there. *I want*

a soldier who is seasoned and hardened and toughened until he can march all day and *fight* all night if it is necessary. I do not want a molly coddle that is too fat and too heavy to move with action swift and prompt when the time comes; *I want a trained soldier* and I want him equipped. *This is the meaning of this legislation*—that we shall train them until they are equipped. *Are we going to march raw recruits, like we did during the World War, to a battle-front for training. Or are we going to train them here* in our own homeland in the great cantonments which we have built, *so they may be prepared when they are called to go—trained in peacetime,* instead of before an oncoming, ruthless mechanized foe in the powerful striking force?"

RESUME OF THE LEGISLATIVE HISTORY OF THE EXTENSION OF SERVICE ACT OF DECEMBER 13, 1941

Note: Citations are of similar scope to those given in Appendix A in connection with Extension of Service Act of August 18, 1941. All page references are, unless otherwise specified, to Congressional Record, 77th Congress, First Session, Volume 87, Part 9.

Senate

Dec. 9, 1941 — Proposed joint resolution, as drafted by War Department, received by Senate (pp. 9544-9545).

Dec. 9, 1941 — Senator Reynolds introduced such proposed joint resolution as S. J. Res. 117, which was thereupon referred to Committee on Military Affairs.

Dec. 10, 1941 — S. J. Res. 117 reported by Committee on Military Affairs with amendments (p. 9601). See S. Rept. No. 888 of Dec. 10, 1941.

Dec. 10, 1941 — S. J. Res. 117, as reported with amendments, debated (pp. 9601-9605).

Dec. 11, 1941 — S. J. Res. 117, as reported with amendments, printed in record and passed by Senate (pp. 9653-9654).

House of Representatives

Dec. 10, 1941 — Rep. May introduced H. R. 6195, which was referred to Committee on Military Affairs (p. 9598).

Dec. 10, 1941 — H. R. 6195 reported back by Committee on Military Affairs without amendment (See H. Rept. No. 149), and referred to Committee of whole House (p. 9649).

Dec. 11, 1941	H. R. 6195 laid on table and House, without debate, passed S. J. Res. 117 in lieu thereof (p. 9673).
Dec. 13, 1941	Approved and signed by President. Public Res. 338 (p. 9751).

An examination of the foregoing legislative history leads inevitably to the same conclusions as stated at pages 4 and 5 of this petition, and requoted at pages iv and v of Appendix A.

Accordingly, in Appendix D the following excerpts have been made from the legislative history of the Extension of Service Act of December 13, 1941, at the pages indicated:

pp. xxvii-xxix—Excerpts from statement of Senator Reynolds, Chairman of the Senate Committee on Military Affairs, in connection with Senate Joint Res. 117.

pp. xxix—Excerpt from Report of the Committee on Military Affairs, Senate Report No. 888, to accompany S. J. Res. 117, Dec. 10, 1941.

It will be noted from the statement of Senator Reynolds that S. J. Res. 117 originated with a proposed joint resolution *prepared by the War Department* and quoted at page xxviii of Appendix D. In such suggested joint resolution drafted by the War Department, it will be noted that the request for extension of service is expressly confined solely to those "subject *to active military service*". It will further be noted that all Senator Reynolds' references are solely to the extension of service of "members of our Armed Forces

and those who are to be inducted into the Armed Forces". Again, nowhere is there the slightest reference to conscientious objectors.

This is also true of the brief debate in the Senate on December 10, 1941. There was no debate in the House, and no reported hearings before the respective Committees on Military Affairs of either the House or the Senate.

Finally, it will be noted that this legislation was requested by the War Department and introduced in the Senate the day following Pearl Harbor, and introduced into the House the day thereafter, as emergency legislation relating solely to the extension of service of those "subject *to active military service*" and was so enacted. (See Appendix E, p. xxxv.) There cannot be, therefore, the slightest excuse for concluding that there was any intention upon the part of Congress in enacting this legislation thereby to extend the service of conscientious objectors, such as petitioner, *who never were or could be in or subject to any military service whatever, active or otherwise.* Such conscientious objectors since found conscientiously opposed even to non-combatant service, by the express provisions of Section 5 (g) of the Selective Training and Service Act of 1940, could only be *"assigned* to work of national importance *under civilian direction"*.

EXCERPTS FROM STATEMENT OF SENATOR REYNOLDS, CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS OF THE SENATE IN CONNECTION WITH SENATE JOINT RES. 117. (CONGRESSIONAL RECORD, 77TH CONGRESS, FIRST SESSION, VOLUME 87, PART 9, pp. 9544 and 9545, and pp. 9601 and 9602)

(Pages 9544-9545)

"REMOVAL OF RESTRICTIONS ON SERVICE OF *ARMED FORCES.*"

"MR. REYNOLDS. Mr. President, the War Department has requested that we give immediate consideration—that is, this afternoon—to its request that the Government be permitted to send *our armed forces* outside the Western Hemisphere, which up to the present time has been prohibited, and that the *members of our armed forces and those who are to be inducted into the armed forces of the United States* be retained for a period of six months after the termination of the present emergency or emergencies to follow. Therefore I ask that the joint resolution prepared by the War Department,* which I now introduce, be read at the desk.

THE PRESIDENT pro tempore. Without objection, the joint resolution will be read.

The joint resolution (S. J. Res. 117) removing restrictions on the use, and terms of service, of units and members

*Inquiry by counsel to the Clerk of the Senate Committee on Military Affairs develops that the Committee has no record that any letter or other written communication was received from the War Department in connection with such joint resolution prepared by it.

of the Army of the United States, was read the first time by its title, and the second time at length, as follows:

> "Resolved, etc., That the provisions of Public Resolution No. 96, Seventy-sixth Congress, approved August 27, 1940, and of the Selective Training and Service Act of 1940, as amended, insofar as they restrict the territorial use of units and personnel *of the Army of the United States, including selective trainees,* are suspended during the existence of the present or any future war in which the United States is engaged, and for 6 months thereafter. Sec. 2. The periods of appointment, enlistment, *induction and service of all members of the Army of the United States, including selective trainees,* now or hereafter *in or subject to active military service* of the United States, are extended for the period stated in the preceding section"

* * * *

(Pages 9601-9602)

"Likewise the joint resolution (S. J. Res. 117) provides for the 'freezing the enlistment period of the men *now in the armed forces and those who may serve in the future* so as to cover the period of the present war and duration thereafter of 6 months. The purpose is to give the Army authorities an opportunity to liquidate, disband and discharge the members *of the armed forces.*' "

* * * *

Senator Reynolds then stated that the definition of Army of the United States was amended to make clear it includes persons *inducted into* the land forces of the United States under Selective Service and Training Act of 1940.

Senator Lodge stated that up to this amendment *selectees* were not members of Army.

(For amended definition see excerpt from report of Committee on Military Affairs—Senate Report No. 888; to accompany S. J. Res. 117, which follows)

EXCERPT FROM REPORT OF THE SENATE COMMITTEE ON MILITARY AFFAIRS—SENATE REPORT NO. 888; TO ACCOMPANY S. J. RES. 117 (Dec. 10, 1941)

* * * *

"Section 2 extends the period of service during wartime, and for 6 months thereafter, *of persons in the Army of the United States.* In other words, it freezes them in for the duration of the war, and for an additional 6 months to provide for terminating their service in an orderly manner. Similar legislation has already been passed by the Senate with respect to persons in the naval service.

Section 3 amends the definition of the Army of the United States which is now contained in section 1 of the National Defense Act of June 3, 1916, as amended, so as to make it clear that persons heretofore or hereafter *inducted* into the land forces of the United States under the Selective Training and Service Act of 1940 *are members of the Army of the United States.* As some question has been raised about this matter, it is deemed advisable to clarify it at this time."

SELECTIVE SERVICE AND TRAINING ACT OF 1940, AS AMENDED

(54 Statutes 885; 50 U. S. C. App. 303 (a), (b), 305 (g))

* * * *

"3 (a) Except as otherwise provided in this Act, every male citizen of the United States, and every male person residing in the United States, who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and service in the land or naval forces of the United States. * * *

3 (b) Each man inducted under the provisions of subsection (a) shall serve for a training and service period of twelve consecutive months, unless sooner discharged, except that whenever the Congress has declared that the national interest is imperiled, such twelve-month period may be extended by the President to such time as may be necessary in the interests of national defense.

* * * *

5 (g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. * * *"

SERVICE EXTENSION ACT OF 1941

(Public Law 213, 1941, approved Aug. 18, 1941; 55 Statutes 626; 50 U. S. C. App. Sec. 351, 352)

"The Congress, acting in accordance with and solely for the purpose of carrying into effect the provisions of section 3 (b) of the Selective Training and Service Act of 1940 hereby declares that the national interest is imperiled.

Sec. 2. The President is hereby authorized, subject, however, to the condition hereinafter stated, to extend, for such periods of time as may be necessary in the interests of national defense, the periods of service, training and service, enlistment, appointment, or commission, of any or all persons inducted for training and service under said Act, members and units of the reserve components of the Army of the United States (including the National Guard of the United States), retired personnel and enlisted men of the Regular Army, and any other members of the Army, who are now, or who may hereafter be, in or subject to active military service, or training and service: *Provided,* That extension of the periods of active military service, or training and service, in the case of any person subject to the provisions of this section, shall not, without his consent, exceed eighteen months in the aggregate; except that whenever the Congress declares that it is in the interests of national defense to further extend such periods of active military service and training and service, such periods may be further extended by the President, in the case of any such persons, for such time as may be necessary in the interests of national defense: *Provided further,* that the authority hereby conferred is subject to the condition that the delegation of such authority may be revoked at any time by concurrent resolution of the Congress."

TERRITORIAL USE OF ARMY AND EXTENSION OF SERVICE PERIOD

(Public Law 338, 1941, approved December 13, 1941; 55 Statutes 799; 50 U. S. C. App. Sec. 731, 732)

"The provisions of Public Resolution Numbered 96, Seventh-sixth Congress, approved August 27, 1940, as amended, and of Public, Numbered 783, Seventy-Sixth Congress (the Selective Training and Service Act of 1940), as amended, insofar as they restrict the territorial use of units and members of the Army of the United States, are suspended during the existence of any war in which the United States is engaged, and during the six months immediately following the termination of any such war. Dec. 13, 1941, c. 571, § 1, 55 Stat. 799.

Sec. 2. The periods of service, training and service, enlistment, appointment, or commission, of all members of the Army of the United States now or hereafter in or subject to active military service of the United States are extended for the period stated in the preceding section: *Provided,* that nothing in this section shall be construed to prevent the President from terminating such periods of service, training and service, enlistment, appointment, or commission at an earlier date in any case." Dec. 13, 1941, c. 571, § 2, 55 Stat. 800.

Sec. 3. Section 1 of the National Defense Act of June 3, 1916, as amended (section 2 of Title 10), is amended by striking out the period at the end thereof and inserting in lieu of such period a comma and the following: "and shall include persons inducted into the land forces of the United States under Public, Numbered 783, Seventh-sixth Congress (the Selective Training and Service Act of 1940), as amended." Dec. 13, 1941, c. 571, § 3, 55 Stat. 800.